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JAMES D. MAHER,
CLERK.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1919.

No. [redacted]

ROBERT L. CULPEPPER, *Petitioner,*

vs.

JAMES L. OCHELTREE, *Respondent.*

PETITION FOR A WRIT OF CERTIORARI

TO THE SUPREME COURT OF THE STATE OF CALIFORNIA

SAMUEL HERRICK,
HENRY M. WILLIS,
Attorneys for Petitioner.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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TO THE SUPREME COURT OF THE STATE OF CALIFORNIA.

TO THE HONORABLE CHIEF JUSTICE AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

Your petitioner, Robert L. Culpepper, respectfully petitions this Honorable Court to require that the proceedings in a decree of the Supreme Court of the State of California in the case of Robert L. Culpepper, plaintiff and appellant,

vs. James L. Ocheltree, defendant and respondent, L. A. No. 4,962, in said court on appeal from the Superior Court of Riverside County, be certified to this Honorable Court for review and determination, with the same power and authority and with like effect as if brought to this Honorable Court by appeal or writ of error pursuant to law.

This action was brought by the petitioner against the respondent to procure a decree in equity declaring respondent to hold the title to a certain quarter section of land in trust for the petitioner by reason of the latter's settlement made and homestead application tendered prior to the homestead application of the respondent. Relief was denied by the Superior Court of Riverside County, and on appeal to the Supreme Court of California the judgment was sustained upon the ground that respondent had acquired a contestant's preference right of entry while the land was withdrawn under the reclamation act, that such right remained suspended during the withdrawal, preventing the acquisition of any settlement rights, and that it continued in force during a period of thirty days after the reclamation withdrawal was finally revoked.

Under Section 237 of the Judicial Code (36 Stat., 1156), as amended September 6, 1916 (39 Stat., 726), and as construed by this Court in Ireland vs. Woods (246 U. S., 323), a writ of error does not lie in this case and the judgment below is reviewable only by certiorari.

This petition for writ of certiorari is based on the following grounds:

I.

That the opinion of the highest court of the State of California in this cause, holding that the respondent could and did secure a preference right to the land in controversy under the act of May 14, 1880 (21 Stat., 141),

which right took effect after said land had been restored from the reclamation withdrawal, is in direct conflict with the opinion of the Circuit Court of Appeals for the Ninth Circuit in the case of Edwards vs. Bodkin (249 Fed. Rep., 562, 568). The latter case involved land in the near vicinity of that here in controversy, and hence this Honorable Court should take action to bring about a uniformity of decisions.

II.

That under the express provisions of the said act of May 14, 1880, a contestant's preference right must be exercised within thirty days after the notice of the cancellation of the entry contested, and there is no authority in the Secretary of the Interior, either under the reclamation act of June 17, 1902 (32 Stat., 388), or otherwise, to extend this time to thirty days after the land shall have been restored from the reclamation withdrawal under which it was at the time of the contest or at the time of the cancellation.

III.

That the allowance of the preference right aforesaid is also contrary to the Interior Department's Regulations of January 19, 1909 (37 Land Decisions, 565), providing that "no contest will be allowed against any entry embracing land included within the area of any first form withdrawal, and in all cases where a contest has been allowed prior to such withdrawal, the withdrawal, if made before the termination of the contest, or before entry by the successful contestant, will, *ipso facto*, terminate all right that was acquired by reason of such contest."

IV.

That the petitioner was an actual settler in good faith upon the tract of land here involved in reliance upon the aforesaid Regulations of the Secretary of the Interior, and his rights should, therefore, be protected; whereas, the respondent was a later settler and a later applicant for the land, who relied entirely upon the alleged preference right aforementioned.

In support of this petition, reference is made to the brief this day filed in connection with the like petition in the companion case of Archie J. McLaren, administrator, vs. L. G. Fleischer, said case involving the adjoining tract of land and exactly the same state of facts, except a slight difference in the date of the notice of cancellation of the previous homestead entry. Attention is also called to the fact that there were no printed copies of the State court's decision available for insertion in the certified copy of the transcript of the record, and hence copy of said decision is printed as an exhibit hereto.

Wherefore, your petitioner respectfully requests this Honorable Court to grant the prayer of this petition as set forth in the first paragraph hereof, and that your petitioner may be allowed and receive such other orders as he may be entitled to, and that such decision of the Supreme Court of the State of California may be reviewed and reversed by this Honorable Court.

SAMUEL HERRICK,
HENRY M. WILLIS,
Attorneys for Petitioner.

EXHIBIT A.

OCTOBER.

FILED, DEC. 1, 1919. B. GRANT TAYLOR, CLERK. BY ERB, DEPUTY.

DEPARTMENT ONE.

ROBERT L. CULPEPPER, *Plaintiff and Appellant,*

vs.

JAMES M. OCHELTREE, *Defendant and Respondent.*

L. A. No. 4,962.

BY THE COURT:

The appeal herein was taken from a judgment of the Superior Court of Riverside County dismissing plaintiff's complaint after demurrer sustained and plaintiff refused to amend. This case was submitted on the briefs filed in

McLaren vs. Fleischer, L. A. No. 4,736, this day decided. The only difference between the two cases is that the defendant herein received notice on January 13, 1909, that he had been successful in his contest and was awarded a preference right to enter the land within thirty days after it should be restored to entry. The defendant in McLaren vs. Fleischer received similar notice on February 11, 1909,—the former notice coming within the time section 7 of the Rules and Regulations of the Land Department of June 5, 1905, were in force and the latter after section 7 had been superseded by section 6 of the Rules and Regulations of January 19, 1909.

In view of what we have said in McLaren vs. Fleischer this difference in the time of receipt of notice is immaterial and therefore upon the authority of that case the demurrer herein is sustained.

Judgment affirmed.